QUAH BAN POH

v.

DRAGON GARDEN PTE. LTD.

HIGH COURT MALAYA, JOHOR BAHRU
GUNN CHIT TUAN J
[CIVIL SUIT NO. 73 OF 1977]
19 JANUARY 1985

CONTRACT: *Agreement for sale and purchase of land - Breach of - Specific performance - Damages - Date of assessment of - Time of the essence - Waiver of - Time becoming of the essence again - Solicitors acting for both parties.*

The plaintiff had agreed to purchase a piece of land with a house to be erected thereon to be completed on or before 31 December 1975. When the defendant notified the plaintiff that the house was completed and fit for occupation, the plaintiff after inspection wrote to the defendant attaching a list of uncompleted works. On 10 April 1976 the defendant wrote requesting payment of the last instalment. The plaintiff in response sent a cheque for the amount to the solicitors acting for both parties in the transaction, subject to a condition that the solicitors will be held responsible if payment is released to the defendant before the works are completed. The solicitors returned the said cheque without the instructions of the defendant. The plaintiff finally collected the keys on 22 September 1976.

On 16 October 1976, the defendant terminated the agreement and 4 days later forwarded a cheque for RM26,950 being the refund of monies paid by the plaintiff to the defendant less 20% (RM7,700) of the purchase price being forfeitable deposit. The plaintiff did not pay the cheque into his account but considered the said agreement as still subsisting. He then obtained a quotation for the cost of remedying the uncompleted works and defects. An action was brought for damages for breach of contract and for delivery of the title deed.

Held:

[1] The tender of payment by the plaintiff under protest was a valid tender to the defendant as it was clear that the said solicitors were acting for both parties on that date, and the condition imposed was reasonable.

[2] The agreement was not validly terminated on 16 October 1976 as the condition that time shall be of the essence was waived by the conduct of the defendant with the result that time became at large. Time could only have been of the essence again if the defendant had given the plaintiff a notice fixing a reasonable time within which he must pay the last instalment. What is reasonable time is a question of fact to be decided on the circumstances of each case.

[3] Notwithstanding the default of the plaintiff of the last instalment he was not unready or unwilling to perform and it is equitable that the Court should exercise its discretion in the plaintiff's favour and order specific performance.

[4] As to damages, there was no evidence to show what losses the plaintiff had suffered as a direct result of the delay in completion and he was therefore not entitled to any damages on that account. However damages should be assessed on the basis of what it would cost the plaintiff to obtain performance or completion of performance of the contract by a third party. The general rule that damages should be assessed as at the date when the cause of action arose is not an absolute rule and the Court has power to fix such other date as may be appropriate. As there is evidence that the work is still not completed and that it would

cost at least double the amount of the quotation obtained by the plaintiff, damages is assessed at RM4,586.36 with interest at 8% p.a. on that amount from the date of judgment to the date of payment.

[5] There was no evidence that the plaintiff was a trespasser after the letter of termination dated 16 October 1976, therefore the defendant's counterclaim for mesne profits was dismissed, but the plaintiff should pay the defendant the last instalment of RM3,850, together with interest at 10% p.a. as provided for in the agreement.

[Each party to pay own costs.]

Cases referred to:
Manning v. Lunn [1845] 2 Car & Kir 13 N 1
Scott v. Uxbridge & Rickmansworth Railway Co. [1866] LR 1 CP 596
Sweny v. Smith [1869] LR 7 Eq. 324; 38 LJ Ch 446
Greenwood v. Sutcliffe [1892] 1 Ch 1
Syarikat Eastern Plastics Industry v. Syarikat Lam Seng Trading [1972] 1 MLJ 21
Webb v. Hughes [1870] Lr 10 Eq 281
Wong Kup Sing v. Jeram Rubber Estate Limited [1969] 1 MLJ 245
Playing Cards (Malaysia) Sdn. Bhd. v. China Mutual Navigation Co. Ltd. [1980] 2 MLJ 182
Charles Rickards Ltd. v. Oppenheim [1950] 1 All ER 420
Mehmet v. Benson [1965] 113 CLR 295
Itam bt. Saad v. Chik bt. Abdullah [1974] 1 MLJ 53
Miliangos v. George Frank (Textiles) Ltd. [1976] AC 443
Johnson v. Agnew [1980] AC 364

Legislation referred to:
Specific Relief Act 1950 (Revised - 1974), s. 18

For the plaintiff - L. Parthiban; M/s. Ong Ban Chai & Co.
For the defendant - Tia Chak Yit; M/s. Tia & Noordin

JUDGMENT

Gunn Chit Tuan J:

Quah Ban Poh (the plaintiff) who is an engineer, sued Dragon Garden Pte. Ltd. (the defendant) for damages for breach of contract and for delivery of the title deed relating to QT (R) NO. 2401, MLO No. 2439, Mukim of Plentong, District of Johore Bahru, State of Johore (the said land). The plaintiff had agreed by a written agreement dated 20 July 1974 (see pp. 1 - 18 of the Agreed Bundle marked A) to purchase the said land from the defendant together with a double-storey house to be erected thereon for a total purchase price of RM38,500. Under the said agreement the defendant was to complete the house within a period of 18 months i.e. on or before 31 December 1975.

The events leading up to the institution of this suit on 2 February 1977, were as follows. On 20 November 1975, the plaintiff received a letter (P2) from M/s. Tan & Tan, advocates & solicitors who were representing both parties, notifying him that the house was completed and fit for occupation. He was asked to arrange to take possession of the house and to pay the last and final instalment of RM3,850 within 14 days of receipt of the said letter. The plaintiff also received a copy of an architect's certificate (P3) signed by one Zainal Abidin Sarajudin (PW2) who was employed by the defendant. On receipt of P2 the plaintiff went to check the house after which he wrote a letter dated 2 December 1975, (P4) to M/s. Tan & Tan attaching a list of uncompleted works which he found during his inspection of the house. On 24 December 1975, the plaintiff received another letter (P5) from the defendant informing him that the house was completed and was fit for occupation. The plaintiff went to check

the house a second time and found many items missing, as a result of which he wrote to the defendant on 8 January 1976 (P6) together with a list of uncompleted works and defects in the house. He also requested for a joint inspection of the uncompleted works and defects. Subsequent to that there were other letters exchanged between the plaintiff, the defendant and their solicitors M/s. Tan & Tan (P7-P15).

On 10 April 1976, the defendant wrote a letter (P16) to the plaintiff informing him that the uncompleted works have been fully remedied and requested payment of the last instalment of RM3,850, or otherwise it would terminate the said agreement. The plaintiff in reply to the defendant's letter of 10 April 1976 (P16) wrote a letter dated 13 May 1976 (P19) to M/s. Tan & Tan and copied to the defendant informing them that there were still uncompleted works and defects in the house. He, however, sent a cheque for RM3,850 - (P20) to the said solicitors as the last instalment of ten percent for the house subject to a condition that "M/s Tan & Tan will be held responsible if the last payment is made to the developers before the works are completed". But on 15 May 1976 M/s. Tan & Tan returned the said cheque to the plaintiff without the defendant's instructions (P21). However on 18 May 1976, the plaintiff requested the defendant's architect (PW2) to inspect the house together with him, and after their joint inspection the plaintiff wrote a letter (P22) to PW2 listing the uncompleted works and defects in the house which were still there when they inspected it. PW2 then wrote a letter to the defendant on 29 May 1976, (P23) requesting it to take necessary action to remedy the defects and uncompleted works.

There was then apparently a period of inactivity for a few months until 17 September 1976, when one John Chang (DW1), the chairman of the defendant, wrote a letter (P24) to the plaintiff requesting him to make arrangements to take over the house and to pay the balance of RM3,850 immediately. The plaintiff went to get the keys of the house on 22 September 1976, and on 4 October 1976, the defendant wrote to M/s. Tan & Tan (D37) requesting them to collect from the plaintiff a sum of RM4,295.96 which was the last instalment plus interest chargeable for late payment. M/s. Tan & Tan in accordance with the defendant's instructions wrote to the plaintiff on 6 October 1976, (P25) requesting payment of RM4,295.96 immediately. But on 13 October 1976, the defendant wrote to M/s. Tan & Tan again (D38) instructing them to terminate the said agreement. In accordance with the defendant's instruction M/s. Tan & Tan therefore wrote a letter on 16 October 1976, (P26) to the plaintiff to terminate the said agreement **forthwith.** M/s. Tan & Tan also asked the plaintiff to surrender vacant possession forthwith as well as the keys of the house to the defendant "failing which the vendors shall commence Court proceedings without further notice". On 20 October 1976, M/s. Tan & Tan wrote to the plaintiff again (P27) forwarding a cheque for the sum of RM26,950 from the defendant (P28) being refund of the monies paid to the defendant:

> Less the sum of RM7,700 being 20% of purchase price being forfeited as liquidated damages pursuant to Clause 16 of the Agreement of Sale date 20 July 1974.

The plaintiff did not pay the said defendant's cheque into his account and considered that as far as he was concerned the said agreement had not been terminated. On 27 October 1976, he again requested PW2, the defendant's architect, to go and inspect the said house with him after which he wrote to PW2 (P29) listing the defects which were still present during the joint inspection on the morning of 27 October 1976. The plaintiff had also instructed one Chew Kuan Ting (PW3) a contractor to inspect the house and to give a quotation for the cost of remedying the uncompleted works and defects (P33 and P34), which I found on the evidence adduced, were still there in October 1976, despite the architect's letter (P3) dated 17 September 1975, that the house was "fully completed in accordance to plan and fit for occupation" and the defendant's subsequent letters claiming that the uncompleted works

and defects had been "fully remedied". By about the end of October 1976, the plaintiff also decided to instruct a new firm of solicitors to represent him. His new solicitors, Ong Ban Chai & Co., wrote to M/s. Tan & Tan on 4 November 1976 (P30) in reply to their letters of 16 and 20 October 1976, (P26 & P27) to point out that:

> the defendant had failed to rectify defects in the said house as a result of which the plaintiff was compelled to carry out the necessary repairs for the said house.

Ong Ban Chai & Co., as instructed, also forwarded a cheque for RM1,556.85 (P33) being the balance of the purchase price less the estimated cost of repairs of RM2,293.15. They also returned to M/s. Tan & Tan the defendant's cheque for RM26,950 - (P28).

Amongst the various issues raised by both Counsel in their submissions, I agreed that the following issues were relevant and had to be considered by the Court in order to determine this suit:

(a) Was a tender of payment by the plaintiff under protest a valid tender to the defendant?

> It was firstly the submission of Mr. Tia, Counsel for the defendant, that when the plaintiff sent his cheque (P20) to M/s. Tan & Tan on 13 May 1976, he did not send the money either to the defendant or to the defendant's solicitors but to his own solicitors. That contention was rejected by me because it was clear from the evidence that M/s. Tan & Tan were acting for both parties on that date. Here one need only remind oneself of the fairly large number of cases in which the Courts have pointed out the dangers and the undesirability of the same solicitor acting for both vendor and purchaser which, as in this case, have resulted in trouble for both parties.
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> Another complaint of Counsel for the defendant was that because the plaintiff had imposed an unreasonable condition when he tendered payment of the last instalment that condition was unacceptable to his own solicitors M/s. Tan & Tan who therefore rejected it and returned the cheque to him. It was also the contention of Mr. Tia that even if M/s. Tan & Tan were considered to be acting for both parties, yet they were correct in rejecting the payment on 15 May 1976, (P21) and the plaintiff had therefore not made any payment at all on 13 May 1976. In this connection it is necessary to refer to the actual words used by the plaintiff in the following paragraph of his letter of 13 May 1976 (P19) when he tendered payment of the last instalment:
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> The writer visited the above house on Wednesday 12 May 1976, and found the uncompleted works plus defects still present. A cheque No. 7801.36 for the sum of RM3,850 for my last instalment for the house is paid **under protest.** As it had been pointed out in my letters that items of work in the house have not been completed, M/s. Tan & Tan will be held responsible if the last payment is made to the Developers before the works are completed.

From the above I considered and found that the payment of the last instalment of RM3,850 by the plaintiff was a tender of the said sum under protest and was therefore a good and valid tender. (See *Manning v. Lunn* [1845] 2 Car & Kir 13 N 1; *Scott v. Uxbridge & Rickmansworth Railway Co.* [1866] LR 1 CP 596; *Sweny v. Smith* [1869] LR 7 Eq 324; 38 LJ Ch 446; *Greenwood v. Sutcliffe* [1892] 1 Ch 1).

(b) Was the agreement between the plaintiff and the defendant validly terminated on 16 October 1976?

It was the contention of Mr. Tia that Counsel for the plaintiff, Mr. Parthiban, should not be allowed to question the validity of the notices, particularly P2, as it was not pleaded specifically in the statement of claim. But the plaintiff in para. 9 of the statement of claim did aver that "on 16 October 1976, the defendant through their solicitors, M/s. Tan & Tan purportedly terminated the said agreement...". As regards Mr. Tia's contention that the plaintiff

should have pleaded specifically that the notice dated 16 October 1976, (P26) was bad in law and in fact, I agreed with Counsel for the plaintiff that the use of the word "purportedly" in para. 9 of the statement of claim was sufficient to show that the plaintiff did not in any way accept the validity of the termination of the agreement and/or the right of the defendant to terminate it. Mr. Tia however submitted correctly that another question the Court had to consider was whether by the conduct of the parties and in particular that of the defendant, notice had been waived. But he contended that the right to terminate the agreement subsisted after the plaintiff failed to pay the last instalment within 14 days of the notice dated 20 November 1975, (P2) and was exercisable at any time after expiry of the stipulated period. He relied on the following Clause 15(a) in the said agreement which reads as follows:

> 15. If Purchaser shall:
>
> (a) fail to pay any of the instalments of the Balance Sum in accordance with the provisions of Clause 10 hereof: or ... it shall be lawful for the Company at any time thereafter to annul the sale of the said land and the said building and to forthwith terminate this Agreement.

He also contended that all the defendant's letters subsequent to the notice of 20 November 1975, (P2) up to and including his solicitors's letter date 16 October 1976, (P26) were valid notices to terminate the said agreement and upon which the defendant might exercise its right to terminate the agreement at any time pursuant to the above-mentioned Clause 15. It was therefore his contention that the said agreement was validly terminated on 16 October 1976.

I however agreed with Counsel for the plaintiff that in considering the validity of the termination of the agreement, the Court had to consider and determine other issues such as whether time was of the essence of the agreement; did the parties by their conduct waive the stipulation as to time being the essence of the agreement, and what was the effect of the waiver of time being the essence of the said agreement?

As regards time being the essence of the agreement, reference must be made to s. 4(7) of the Second Schedule to the said agreement which states the instalment payments shall be paid by the purchaser to the company within 14 days of the receipt of notice from the company demanding such payment. Reference must also be made to Clause 10(a) and (b) of the said agreement which provides that:

> 10(a) The Balance Sum as specified in s. 3 of the Second Schedule hereto shall be paid by the Purchaser at the times and in the manner as set out in s. 4 of the Second Schedule hereto by instalments in the manner and at the times as specified in the said s. 4 of the Second Schedule hereto.
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> (b) Time shall be of the essence of the Contract in relation to all the provisions of this Agreement as shall relate to the payment of the Balance Sum or any part thereof.

From the above clause it is obvious therefore that time was originally to be of the essence of the agreement. But as regards the issue of whether the parties their conduct had waived the stipulation as to time being the essence of the agreement, reference was made by Counsel for the plaintiff to the case of *Syarikat Eastern Plastics Industry v. Syarikat Lam Seng Trading* [1972] 1 MLJ 21, 22 in which Mohd Azmi J.(as he then was) referred to the following dictum of Sir R. Malins V.C. in *Webb v. Hughes* [1870] LR 10 Eq 281 at p. 286:

> But if time be made of the essence of the contract, that may be waived by the conduct of the purchaser; and if the time is once allowed to pass, and the parties go on negotiating for completion of the purchase, then time is no longer of the essence of the contract. But, on the other hand, it must be borne in mind that a purchaser is not bound to wait an indefinite time;

> and if he finds, while the negotiations are going on, that a long time will elapse before the contract can be completed, he may in a reasonable manner give notice to the vendor, and fix a period at which the business is to be terminated.

The above dictum was also approved by Raja Azlan Shah J (as he then was) in *Wong Kup Sing v. Jeram Rubber Estate Limited* [1969] 1 MLJ 245 in which His Lordship held that:

> once time for completion was allowed to pass and the parties went on negotiating, time was no longer of the essence of the contract ...

In this case the defendant could have terminated the agreement on or before 3 December 1975, after sending P2 to the plaintiff on 20 November 1975. But there was ample evidence to show that the defendant had waived this time stipulation. Although it was the contention of Counsel for the defendant that the plaintiff should not be allowed to rely on the waiver which was not specifically pleaded in his statement of claim, yet I considered that both parties knew the case presented by the other, and in fact evidence relevant to this issue was adduced by both parties without objections again by either side, justice therefore required that any substantive issue between the parties should be considered. *(Playing Cards (Malaysia) Sdn. Bhd. v. China Mutual Navigation Co. Ltd.* [1980] 2 MLJ 182). In fact the defendant's Chairman Mr. John Chang (DW1) even admitted in cross-examination that "I waived my right to cancel the agreement on 3 December 1975, because I wanted my lawyer to negotiate at a later date". All the evidence, both oral and documentary, therefore showed that the defendant had waived and allowed time of payment of the last instalment to pass.

Finally, the effect of waiver of time being the essence of the agreement was that time became at large. Therefore if the defendant had wanted to make time again of the essence of the contract, it should have given the plaintiff a notice fixing a reasonable time within which he must pay the last instalment; and what is a reasonable time is a question of fact to be decided on the circumstances of each case *(Charles Rickards Ltd. v. Oppenheim* [1950] 1 All ER 420). In our case, it was understandable that DW1, who appeared to be an arrogant man, became impatient with the plaintiff who was knowledgeable about buildings and was also a fastidious man. But in accordance with DW1's intructions to his solicitors in his letter of 13 October 1976, (D38) and in M/s. Tan & Tan's letter of 16 October 1976, to the plaintiff (P26) no reasonable time at all was fixed within which the plaintiff was asked to pay the last instalment of RM3,850. The said agreement was therefore not validly terminated by the letter (P26) on 16 October 1976. The situation here was somewhat similar to that in *Wong Kup Sing v. Jeram Rubber Estate Limited* which was also a case in which the plaintiff claimed specific performance of an agreement of sale of a rubber estate entered into between him and the defendant. Under the agreement time had been made the essence of the contract, but at the request of the plaintiff the defendants had consented to extension of time for completion on six separate occasions. Eventually the defendants through their solicitors wrote to the plaintiff on 15 November 1967, insisting that the purchase be completed on the same day. Raja Azlan Shah J (as he then was) held, "*inter-alia*", that the defendants in that case must give reasonable notice of their intention to abandon the contract if the balance was not paid. His Lordship also held that the notice of abandonment dated 15 November 1967, was not a reasonable notice and the contract had not been terminated; in the circumstances the plaintiff had made out a case for specific performance of the contract. Similarly, as the defendant in this case had not given the plaintiff any reasonable notice at all in its solicitors' letter (P26) to make time again the essence of the contract, the said agreement was therefore not validly terminated by that solicitors' letter of 16 November 1976.

(c) Was the plaintiff in equity entitled to specific performance of the agreement?

It was the contention of Counsel for the defendant that because the plaintiff was a fastidious man and his entire conduct and behaviour in this case compared to that of the defendant, were unreasonable, his claim should be dismissed. On the other hand, Counsel for the plaintiff contended that even though the plaintiff was fastidious he was not an unreasonable man and was only exercising his rights under the said agreement. Counsel pointed out that the plaintiff was always ready and willing to perform his part of the agreement and did not withhold payment of the last instalment but only tendered it under protest. He submitted that the complaints of the plaintiff were legitimate and that he was merely asking the defendant to fulfill its obligations. Although he took possession of the keys to the house on 22 September 1976, he could not occupy it because of the incomplete works and defects which were confirmed by the defendant's own architect (PW2). In this context it would be useful to refer to the following passage in the judgment of Barwick CJ in the Australian High Court case of *Mehmet v. Benson* [1965] 113 CLR 295, 307:

> The question as to whether or not the plaintiff is ready and willing to perform the contract is one of substance not to be resolved in any technical or narrow sense. It is important to bear in mind what is the substantial thing for which the parties contract and what on the part of the plaintiff in a suit for specific performance are his essential obligations. Here the substantial thing for which the defendant bargained was the payment of the price; and, unless time be and remain of the essence, he obtained what he bargained for if by the decree he obtains his price with such ancillary orders as recompense him for the delay in its receipt. To order specific performance in this case would not involve the Court in dispensing with anything for which the vendor essentially contracted.
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> Of course, the plaintiff must not by his unreadiness or unwillingness to perform have disowned his obligation to do so, or abandoned his rights to the benefit of the contract. But it is the essential terms of the contract which he must be ready and willing to perform. He seeks a transfer of the interest in land, the subject of the contract: the counterpart obligation is the payment of the price. In considering the question of the plaintiff's readiness and willingness in this respect in this case there are many factors. His default in paying the instalments of the price, whilst not conclusive, is amongst these factors ...
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> In my opinion, withstanding the defaults of the plaintiff in the payment of the instalments of price, he was not unready or unwilling to perform the contract in its essential terms; specific performance ought to have been granted.

In that Australian case the plaintiff was substantially in arrears for some years and yet he obtained an order for specific performance. In our case the plaintiff was always not unready or unwilling to perform his part of the agreement which had in fact been substantially performed on his part in that he had already paid ninety percent of the purchase price prior to and during the year 1975. As regards the last instalment of ten percent, he did tender it to M/s. Tan & Tan, who unfortunately were the solicitors for both parties. M/s. Tan & Tan without instructions from the defendant rejected payment of that last instalment by the plaintiff also without having advised the latter before writing their letter of 15 May 1976 (P21). Having taken into consideration the facts and all the surrounding circumstances of this case, the arguments of both Counsel on the various issues raised, and also having regard to the fact that the plaintiff has been in possession of the house for more than eight years since 22 September 1976, I considered that it was equitable that the Court should exercise its discretion in his favour and therefore ordered specific performance of the said agreement i.e. that the defendant to deliver to him the title deed to the said land and to execute a valid and registerable transfer in favour of him. *(Itam bt. Saad v. Chik bt. Abdullah* [1974] 1 MLJ 53).

(d) Was the plaintiff also entitled to damages?

Mr. Tia submitted briefly on damages and stated that if the plaintiff was entitled to damages, the amount of damages should not exceed the sum stated in the letter of PW3 (P34). Counsel for the plaintiff referred to s. 18 of the Specific Relief Act 1950, (Revised - 1974)) which provides that:

> any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, its performance.

That section also provides that if the Court decides that specific performance ought to be granted, but it is not sufficient to satisfy the justice of the case, it could also award to the plaintiff compensation in such a manner as the Court may direct. Counsel also submitted that there have been breaches of the contract by the defendant in wrongfully terminating it and also in not constructing the house with good workmanship and having used defective materials. He referred to the quotations given by PW3 and submitted that the sum of RM2,293.15 would be grossly inadequate because the quotations were made in 1976, and referred to PW3's evidence that the cost at the present time would be double and submitted that the plaintiff was therefore entitled to a sum of RM4,586.30 as damages which should be assessed as on the date the contract was lost and that, according to him, must be the date of hearing of the suit. Counsel then pointed out that the plaintiff had made every attempt to mitigate his damages, and claimed that damages should also be awarded for late delivery of the house which should have been completed and be ready for occupation on 20 November 1975. However as there was no evidence to show what losses the plaintiff had suffered as a direct result of the delay in completion of the house, I did not consider that he was entitled to any damages on that account. In the circumstances of this case I considered that the damages should be assessed on the basis of what it would cost the plaintiff to obtain performance or completion of performance of the contractual undertaking by a third party such as PW3. The general rule of course is that damages for breach of contract should be assessed as at the date when the cause of action arose, namely the date of the breach *(Miliangos v. George Frank (Textiles) Ltd.* [1976] AC 443, 468). But this is not an absolute rule and the Court has power to fix such other date as may be appropriate in the circumstances. (*Johnson v. Agnew* [1980] AC 364, 400). As there was evidence that the uncompleted works and defects which were in the house when the plaintiff took possession on 22 September 1976, are still there and that it would cost at least double the amount of the quotation given by PW3 to remedy them, I therefore assessed damages at RM4,586.36 and also ordered interest at eight percent on that amount from the date of judgment to the date of payment. As I did not consider or find that the plaintiff was in the circumstances a trespasser after he received the letter dated 16 October 1976, from the solicitors M/s. Tan & Tan, I therefore dismissed and defendant's counterclaim for mesne profits at the rate of RM800 per month from the date of the alleged trespass. But in the circumstances I considered that the defendant was entitled to and therefore ordered the plaintiff to pay it the sum of RM3,850 i.e. the last instalment of ten percent, together with interest thereon at ten percent as provided for in s. 4(7) of the Second Schedule to the said agreement with effect from 22 September 1976, to the date of payment thereof. In the circumstances of this case I also considered that the parties should each pay their own costs and so ordered.

Also found at [1985] 2 CLJ 75